

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:06-cr-3145
)	
Plaintiff,)	MOTION PURSUANT TO RULE 36 TO
)	CORRECT AN ERROR IN THE RECORD
)	
vs)	
)	
O'DARI ZANDAGHE WILEY,)	
)	
Defendant.)	

COMES NOW the Defendant O'dari Wiley, through undersigned counsel, and respectfully moves this Court pursuant to Rule 36 of the Rules of Criminal Procedure to correct an error in the Judgment and Commitment Order to allow for additional credit toward the Federal sentence first imposed on November 7, 2007. In support of this Motion, Wiley sets forth the complicated procedural history as follows:

- 1) This Court originally sentenced Wiley for a Conspiracy to Distribute Crack Cocaine offense that concluded on 4/11/06 to a term of 151 months with credit for time served in official detention in the case from 9/30/2006 through 10/5/2006 and then again from 5/17/ 2007 to the date of the Court's order, November 7, 2007 (See Judgment and Commitment Order dated November 8, 2007);
- 2) Wiley had been released on PreTrial release on October 5, 2006 , was subsequently arrested on May 17, 2007 on State of Nebraska charges, and on June 5, 2007 a Petition for Action on Conditions of PreTrial Release was filed. A federal warrant for Wiley's arrest was issued on that date. (See Docket entry #60). Upon information and belief Wiley was being housed in the Lancaster County, NE corrections when the federal warrant was served upon him. At the time of

federal sentencing, states charges were still pending against Wiley. As of November 8, 2007 his federal sentence was running with the credit mentioned above;

- 3) On June 30, 2009 Wiley was sentenced in Lancaster County, NE District Court on two cases, CR07-766 to a term of 20 years to 20 years, consecutive to any other sentence Defendant "is serving" and concurrent to a one year sentence imposed in CR 08-1131. Said Court order contemplated that Wiley was already serving his federal sentence imposed on November 7, 2007;
- 4) On April 11, 2012, this Court considered a motion to reduce sentence pursuant to the 2011 crack cocaine guidelines amendment and reduced the sentence to 121 months. Counsel raised the issue of the the federal sentence being imposed before any state Court disposition, but failed to assert that at the time the federal sentence was initially imposed Wiley had had his pretrial release revoked and was being held in the Lancaster County, Ne Jail on state charges and the federal warrant for violation of pretrial release. Further, as this Court gave credit for the time being held in state custody against his Federal sentence up to that date, said sentence should have continued to run until being sentenced in State Court on June 30, 2009;
- 5) Counsel is aware of the Court's pronouncement in the Memorandum and Order of April 11, 2012 declining to run the federal sentence concurrent with the later imposed state sentences, but counsel urges this court to consider that Wiley had been placed in the custody of the state as of May 17, 2007 and then a federal warrant had been issued and served on June 5, 2007;

- 6) A subsequent reduction pursuant to 18 U.S.C. § 3582(c)(2) was granted on 6/1/2015 reducing the ultimate sentence to 120 months, with no release earlier than November 1, 2015;
- 7) This case presents the issue of an individual having been served with a federal warrant and being in federal custody at a state facility at the same time he is facing state charges on alleged subsequent conduct, and being held on those charges also. It is urged that Wiley should be entitled to credit against his federal sentence until the imposition of the State sentences on June 30, 2009.

WHEREFORE, Wiley requests an Order providing for additional credit from November 7, 2007 until imposition of the State sentences on June 30, 2009 against the now 120 month sentence imposed on June 1, 2015.

O'DARI Z. WILEY, Defendant.

BY /s Alan G. Stoler
#15764

1823 Harney St Suite 1004
Omaha, NE 68102
astoler@ix.netcom.com
402-346-1733

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed via CM/ECF and the system sent notification to:

Sara Fullerton, AUSA

this 26th day of October, 2015.

/s Alan G. Stoler